HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.116 of 2007

Between:

The Visakhapatnam Co-operative Bank Ltd., Visakhapatnam, rep. by its Secretary

... Appellant

And

The Prudential Cooperative Bank Ltd., R.P Road, Secunderabad, rep., by its Liquidator, Sri V. Amarendar Rao and three others

... Respondents

::JUDGMENT::

Counsel for the appellant : Shri A. Ramalingeswara Rao

Counsel for respondent No.1 : Shri S. Ashok Anand Kumar

February 06, 2007

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated 5-1-2007 passed by the learned Single Judge in WPMP No. 185 of 2007 in Writ Petition No. 13472 of 2005 whereby he directed respondent No.4 – A.P. State Cooperative Bank Limited, Hyderabad to forthwith release Rs.33,38,82,100/- in favour of the petitioner (respondent No.1 herein) and declared that to that extent the liability of Deposit Insurance and Credit Guarantee

Corporation of India Limited (respondent No.3) shall stand extinguished, but, at the same time, ordained that the petitioner shall disburse the amount only to the depositors who are entitled as per the provisions contained in the Deposit Insurance and Credit Guarantee Corporation Act, 1961.

In the writ petition filed by it, respondent No. 1 has challenged order dated 5-5-2005 passed by the Andhra Pradesh Cooperative Tribunal at Visakhapatnam (for short, 'the Tribunal') whereby it decreed O.P No.535 of 2004 filed by the appellant for recovery of Rs.3,69,24,538/- with interest. After one and half year, respondent No. 1 filed an application for issue of a direction to respondent No.4 to release Rs.33,38,82,100/- lying in fixed deposits. The same was registered as WPMP No. 185 of 2007.

The learned Single Judge, after taking cognisance of the statement made by counsel for respondent No.3 that his client does not have any objection to the allowing of the miscellaneous petition, passed the impugned order. For the sake of convenient reference, the order under challenge is reproduced below:

> "Heard all the learned counsel for the parties.
>
> Sri M.P.Ugle, learned counsel appearing for the 3rd respondent fairly stated that the 3rd respondent has no objection for ordering this petition; however, the liability of the 3rd respondent – Corporation to the extent of the amounts paid by the petitioner to its depositors, may have to be extinguished.

> In view of the above, the 4th respondent is directed to release the amount belonging to the petitioner, lying with it, forthwith and to that extent the liability of the 3rd respondent shall stand extinguished. The petitioner shall disburse the amounts only to the depositors, who are entitled as per the provisions of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 and it shall not divert those amounts to any other account."

We have heard learned counsel for the parties and perused the record. Since the writ petition filed by respondent No. 1 is pending adjudication, we do not want to express any opinion on the merits of respondent No.1's challenge to order dated
5-5-2005, because that is likely to prejudice the cause of either of the parties, but we are constrained to remark that the learned Single Judge gravely erred by entertaining the miscellaneous petition filed by respondent No.1 and issuing direction which is clearly beyond the scope of the prayer made in the writ petition. In any case, before passing an interim order like the one impugned in the appeal, the learned Single Judge should have given reasonable opportunity to the appellant to contest the application filed by respondent No.1 and there was no justification to give interim direction which has the effect of virtually disposing of the writ petition, if not wholly, at least partially.

With the above observations, the writ appeal is allowed and the impugned order is set aside.

As a sequel to disposal of the appeal, WAMP No. 191 of 2007 filed by the appellant for interim relief is disposed of as infructuous. However, keeping in view the nature of the case set up by respondent No.1, we request the learned Single Judge to dispose of the main petition as early as possible.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

February 06, 2007
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